

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DATA MANUFACTURING, INC.,)	
)	
Plaintiff,)	
)	
vs.)	No. 4:07-CV-1456 (CEJ)
)	
UNITED PARCEL SERVICE, INC.)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on defendant's bill of costs under 28 U.S.C. § 1920. Plaintiff has filed a memorandum in opposition.

Defendant seeks recovery of \$350.00 in removal filing fees, \$874.50 in court reporter fees and deposition transcripts necessarily obtained for use in the case, and \$203.40 in costs of exemplification and copies necessarily obtained for use in the case, for a total recovery in the amount of \$1,427.90. Under Rule 54(d)(1) of the Federal Rules of Civil Procedure, "costs other than attorney's fees shall be allowed as of course to the prevailing party unless the court otherwise directs." Fed.R.Civ.P. 54(d)(1). Costs that can be taxed by the judge include:

(1) fees of the clerk and marshal; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for the use in the case; and (4) fees for exemplification and copies of papers necessarily obtained for use in the case.

28 U.S.C. § 1920 (1)-(2), (4).

Plaintiff does not contest defendant's request for the removal filing fee, but disputes defendant's request for costs of deposition

copies and for exemplification and copying of documents under § 1920(2) and (4), respectively. Because there is no dispute concerning the filing fee, and because such fees are allowed under § 1920(1), this Court will grant defendant \$350.00 in removal filing fees. However, this Court denies defendant's requests for \$874.50 in court reporter fees and deposition transcripts and \$203.40 in costs of exemplification and copies because copies of depositions and of documents produced for discovery are not taxable as costs.

Costs associated with depositions are taxable if the depositions were obtained for trial preparation and not merely for investigative purposes. Slagenweit v. Slagenweit, 63 F.3d 719, 721 (8th Cir. 1995). However, "the costs of obtaining copies of depositions is not taxable as a cost since the depositions are on file and available to all parties." Rosebrough Monument Co. v. Memorial Park Cemetery Assoc., 572 F.Supp. 92, 94 (E.D. Mo. 1983). Thus, the prevailing party must show that the copies were obtained for reasons other than the party's own convenience. Id.

Defendant seeks reimbursement of \$874.50 in court reporter fees and deposition transcripts. However, defendant has failed to show that the deposition copies were made for any other purpose than its own convenience. In fact, the depositions taken were those of the defendants own employees, who were accessible to defendant at any time. Therefore, this Court disallows these costs.

The exemplification and copying of documents are taxable as costs if the documents were "necessarily obtained for use in the case." 28 U.S.C. § 1920(4). Whether a photocopy expense is necessary, so as to be a cost taxable by the prevailing party, is left to the

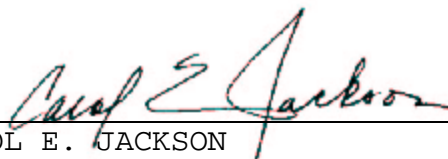
discretion of the court. Lockridge v. HBE Corp., 2008 WL 2020290 (E.D. Mo.). However, this Court has held that § 1920(4) does not extend to documents copied for discovery purposes, because "they are not copies of papers 'necessarily obtained for use in the case.'" Emmenegger v. Bull Moose Tube Co., 33 F.Supp.2d 1127, 1133 (E.D. Mo. 1998).

Plaintiff argues that defendant may not recover \$203.40 in costs of exemplification and copies because the copies were produced for discovery purposes. This Court agrees. In its memorandum in support of its bill of costs, defendant attaches Appendix C, describing the documents copied as "Initial Disclosures and Documents Responsive to Plaintiff's Document Requests." Because the defendant has not demonstrated that these documents were copied for any other reason than for discovery, the photocopying costs are disallowed.

Accordingly,

IT IS HEREBY ORDERED that defendant's bill of costs [#48] is **granted in part and denied in part.**

IT IS FURTHER ORDERED that the Clerk of Court shall tax costs to plaintiff in the amount of \$350.00.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 28th day of January, 2009.